IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 23272 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTIBHAI DHULABHAI & 1 - Petitioner(s)

Versus

SPECIAL LAND ACQUISITION OFFICER & 2 - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner(s) : 1 - 2.MR DEVENDRA A PATEL for Petitioner(s) : 1 - 2.
MR SP HASURKAR Ld. AGP for Respondent(s) : 1-2
MR MISHRA Ld. ADVOCATE for respondent no. 3.

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 22/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr. SP Hasurkar ld. AGP waives service of rule on behalf of respondents no. 1 and 2 and Mr. Mishra ld. Advocate waives service of rule on behalf of respondent

no. 3.

In this petition, order of respondent no. 1 dated 14.9.2005 is challenged. By the said order, respondent no. 1 has rejected the application of the petitioners submitted under the provisions of sec. 28-A(3) of the Land Acquisition Act, requesting him to refer the matter to the Civil Court for enhancement of the compensation awarded under sec. 28-A(1) of the Act. The said application has been turned down on the ground that the petitioners had already accepted the award and, therefore, they were not entitled to resort to the remedy under sub-sec. (3) of section 28-A of the Act.

We have perused the record of this petition. We have also heard Mr. Devendra Patel ld. Advocate for the petitioners, Mr. SP Hasurkar ld. AGP for respondents no. 1 and 2 and Mr. Mishra for respondent no. 3.

It is submitted by Mr. Patel that the entire basis of the impugned order is incorrect because the petitioners have not accepted the amount at the time of submission of application. It is submitted that the amount has been disbursed subsequently and even at that time, the petitioners have accepted the same under protest. According to Mr. Patel, such acceptance does not

disentitle them to make an application under sec. 28-A(3) of the Act. He has, therefore, submitted that the impugned order be quashed and set aside. He has further submitted that in application under sec. 28-A(3), a contention was raised by the petitioners that there were joint owners of the land in question and the compensation be paid to the petitioners for them as well on behalf of other co-sharers, but the same has not been granted in the impugned order by respondent no. 1. He has also submitted that interest of solatium is not paid.

Mr. Hasurkar has, however, submitted that when the petitioners have accepted the amount, they cannot submit application under sec. 28-A(3) of the Act. Mr. Mishra ld. Advocate appearing for respondent no. 3 has submitted that respondent no. 3 has no objection if his share is paid to the petitioners.

Considering the aforesaid aspects carefully, it appears to us that the ground on which application of the petitioner is rejected, is not legal. Firstly, because at the time when the award was determined, but before the same was disbursed, the petitioner has submitted an application to respondent no. 1, meaning thereby, at the time when the application was made, he had not accepted

the award. Therefore, he was entitled to submit such application. Secondly, because it is well settled proposition of law, by now, that when the award is accepted under protest, it does not bar the claimant to resort to further remedy provided under the Act. Therefore, in the instant case, even if the award is accepted under protest, it would not preclude the petitioner from approaching respondent no. 1 under sec. 28-A(3) of the Act. Thus, impugned order is not legal and it is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. We, now refer the matter back to the respondent no.1 to consider the application on its merits.

So far as other two contentions of Mr. Patel are concerned, it appears that they were raised only at the time of submitting the application under sec. 28-A(3) of the Act and not earlier. We, therefore, do not propose to examine those contentions on merit. As and when such contention is raised before respondent no. 1, he will examine the issue in detail and give his decision thereon. In the event, he decides to pass award in favour of co-sharers also, he may direct disbursement of the amount only after due verification and not otherwise and

further ensure that the amount does not go to the petitioner alone but appropriate share is received by each co-sharers. At the time of deciding the application, respondent no. 1 will be entitled to examine all the issues including that of limitation. This process to be completed as early as possible and in any case not later than 31.3.2006. Whatever the decision that may be taken on application be intimated to the petitioner within three weeks from the date of the decision.

In view of the aforesaid, this petition is allowed. Rule is made absolute with no order as to costs.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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